### UNITED STATES DISTRICT COURT EASTERN DISTRICT OF PENNSYLVANIA

DESIGN BASICS, LLC

Plaintiff, : CIVIL ACTION NO.

:

v. : JURY DEMANDED

:

FORINO CO., L.P.

:

:

:

Defendant.

:

#### **COMPLAINT**

Design Basics, LLC, Plaintiff, files this Complaint against Forino Co., L.P., Defendant, and for its causes of action alleges the following:

#### **Parties**

- 1. Design Basics, LLC is a Nebraska Limited Liability Company. Under Articles of Merger executed on July 1, 2009, Design Basics, LLC is the successor by merger to Design Basics, Inc., and as such is the owner of all assets (including copyrights, trade and service names, trade and service marks, and all causes of action) that Design Basics, Inc. owned as of that date. Design Basics, LLC and its predecessor (Design Basics, Inc.) will hereinafter be referred to as "Design Basics" or "Plaintiff."
- 2. Defendant, Forino Co., L.P. ("Forino" or "Defendant"), is a limited partnership organized under the laws of the Commonwealth of Pennsylvania with its principal place of business in Sinking Spring, Pennsylvania.

#### Jurisdiction and Venue

- 3. This Court has subject matter jurisdiction of this case under 28 U.S.C. § 1338 because this action arises under federal copyright law, 17 U.S.C. § 101 et seq.
- 4. Venue is proper in this District under 28 U.S.C. § 1400(a) because the Defendant may be found in this District. Furthermore, or in the alternative, venue is proper in this District under 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to the claims at issue occurred in this District and the Defendant resides and does business in this District.

#### **Factual Background**

- 5. Design Basics is a building design firm engaged in the business of creating, marketing, publishing, and licensing the use of "architectural works" (as that term is defined in the Copyright Act and the Architectural Works Copyright Protection Act of 1990 ("AWCPA")) and technical drawings depicting architectural works. The firm owns copyrights protecting the architectural works and technical drawings it has created.
- 6. Design Basics is the author and the owner of all copyrights in the following designs: Plan No. 1330 Trenton; and Plan No. 1752 Lancaster.
- 7. Design Basics registered the following copyrights with the United States Copyright Office:

Title	Certificate of Registration
Plan No. 1330 – Trenton	VA 314-016 <sup>1</sup>
Plan No. 1752 – Lancaster	VA 371-204 <sup>2</sup>

8. The foregoing works described in paragraphs 6-7 above will be referred to collectively as the "Copyrighted Works."

<sup>&</sup>lt;sup>1</sup> See Exhibit A, Certificate of Copyright Registration for Plan No. 1330 – Trenton

<sup>&</sup>lt;sup>2</sup> See Exhibit B, Certificate of Copyright Registration for Plan No. 1752 – Lancaster

9. For many years, the Copyrighted Works have been widely published nationwide,

including in this District, in numerous Design Basics' plan books and publications. Additionally,

each of the Copyrighted Works has been published in various online publications, including

www.designbasics.com.

10. Each of the Copyrighted Works constitutes original material that is copyrightable

under federal law.

11. Design Basics is currently, and at all relevant times has been, the sole owner of all

right, title, and interest in and to the Copyrighted Works.

12. Defendant engaged, at least in part, in the business of creating, publishing,

distributing, and advertising residential home designs through traditional print media, on the

internet on sites such as http://www.forino.com, and in marketing, advertising, constructing, and

selling homes built according to such designs.

13. Defendant published, distributed, marketed, and advertised certain architectural

designs for residential homes, each consisting of a floor plan and exterior elevations that

Defendant has identified and marketed under the following model names:

The Nantucket

The Rhode Island

The San Diego

The San Diego II

14. Defendant violated and continues to violate Design Basics' exclusive rights in

each of the Copyrighted Works (including the right to reproduce, the right to prepare derivative

works, and the right to sell) by copying, publishing, distributing, advertising, marketing, selling,

or constructing in the marketplace plans, drawings, and houses that were copied or otherwise

derived from the Copyrighted Works, as detailed below:

- a. Defendant's "San Diego" and "San Diego II" (and any predecessors, copies, or derivatives of these models under the same names or a different name) infringe the Design Basics Plan No. 1752 Lancaster (and any derivative thereof).
- b. Defendant's "Nantucket" and "Rhode Island" (and any predecessors, copies, or derivatives of these models under the same names or a different name) infringe the Design Basics Plan No. 1330 Trenton (and any derivatives thereof).

#### Cause of Action

#### **Copyright Infringement**

- 15. Design Basics complains of Defendant for copyright infringement, and incorporates paragraphs 1 through 14 above by reference.
- 16. Defendant's construction and sale of homes and creation of associated design and construction drawings based on Design Basics' Copyrighted Works has infringed and continues to infringe Design Basics' copyrights of the Copyrighted Works.
- 17. Defendant's creation and publication of non-pictorial representations based on Design Basics' Copyrighted Works have infringed and are infringing Design Basics' copyrights in the Copyrighted Works.
- 18. Design Basics is entitled to recover the actual damages it suffered as a result of the foregoing infringement and all of Defendant's profits from such infringement under 17 U.S.C. § 504(b).
- 19. In the alternative to the actual damages and infringer profits sought above, Design Basics is entitled to an award of statutory damages for all infringements of Design Basics' Copyrighted Works under 17 U.S.C. § 504(c).

- 20. Under 17 U.S.C. § 505, Defendant is liable for Plaintiff's costs and reasonable attorney's fees incurred in this action.
- 21. Additionally, under 17 U.S.C. § 502, Design Basics is entitled to preliminary and permanent injunctions prohibiting Defendant from further infringing on its copyrights, including but not limited to the further use of infringing plans; creation or use of derivative plans; and construction, sale, or rental of infringing structures.
- 22. Furthermore, this Court should issue an order under 17 U.S.C. § 503 directing the United States Marshal's Service to (a) impound all copies of the Copyrighted Works in possession of Defendant or its respective agents or contractors in violation of Plaintiff's exclusive rights, and (b) upon final hearing of this case, destroy or otherwise dispose of those copies.

### **Conditions Precedent**

23. With respect to all counts, Design Basics generally avers that all conditions precedent to its rights of recovery have occurred or been performed, or have been waived or excused by Defendant.

#### **Jury Demand**

24. Pursuant to Federal Rule of Civil Procedure 38, Design Basics respectfully demands trial by jury of all issues so triable.

#### <u>Prayer</u>

WHEREFORE, Design Basics, LLC prays that Defendant, Forino Co., L.P., be cited to appear and answer, and that upon final trial it have and recover from Defendant as set forth

above, that it have permanent injunctive relief against Defendant as requested herein, and that it have such and other relief as it may show itself to be entitled.

Respectfully submitted,

Dated: November 4, 2015

Paul J. Kennedy

Jay Dubow

Pepper Hamilton LLP 3000 Two Logan Square Eighteenth and Arch Streets Philadelphia, PA 19103

Tel.: 215-981-4000

Email: <u>kennedyp@pepperlaw.com</u> <u>dubowj@pepperlaw.com</u>

Rick L. Lambert (Texas Bar No. 11844725) Kelly D. Utsinger (Texas Bar No. 20416500) Jennie C. Knapp (Texas Bar No. 24069350) Underwood Law Firm P.C. 500 S. Taylor, Suite 1200 LB 233 Amarillo, TX 79105

Tel: 806-379-5613

Email: <u>rick.lambert@uwlaw.com</u> <u>kelly.utsinger@uwlaw.com</u> jennie.knapp@uwlaw.com

Pro hac motions pending

ATTORNEYS FOR PLAINTIFF DESIGN BASICS, LLC

## **EXHIBIT "A"**

UNITED STATES COPYRIGHT OFFICE



This certificate, issued under the seal of the Copyright Office in accordance with the provisions of section 410(a) of title 17, United States Code, attests that copyright registration has been made for the work identified below. The

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# **EXHIBIT "B"**

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